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COMMISSION ON HUMAN RIGHTS
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Protection of Minorities
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Item 11 of the provisional agenda

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Report on the independence of the judiciary and the protection of practising lawyers, prepared by Mr. Louis Joinet, in accordance with resolution 1990/23 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

Addendum

Note by the Special Rapporteur

1. I have received from the Government of the Philippines information on cases of measures and practices concerning the independence of the judiciary and the protection of practising lawyers dealt with in the report.

2. The cases of measures and practices concerning the independence of the judiciary and the protection of practising lawyers in that country are dealt with in paragraphs 186 to 190, 227 and 245 to 248 of the report.

3. The communication received from the Government of the Philippines is reproduced below in extenso.

PHILIPPINES

[The Government transmitted the following information provided by the Philippine Commission on Human Rights (CHR). The legal texts attached to the reply by the Government are available for consultation at the Centre for Human Rights.]

1. The communication [of 13 June 1991 from the Special Rapporteur] mentioned some cases of arbitrary execution of lawyers and judges such as the assassination of Attorneys Alfonso Surigao, David Bueno, Oscar Tonog, Vicente Mirabueno, Ramos Cura, Gervancia Cadavos and Gil Getes as well as the threats against the person of Attorneys Nerio Zamora, Solema Jubilán and Romeo Capulong.

2. The Commission has already investigated most of the aforesaid cases and the results of our investigation show the following:

(a) Attorney Alfonso Surigao. The killer, identified as Allan Climaco, was arrested. Assisted by Citizens Legal Assistance Office lawyers and after having been informed of his constitutional rights to remain silent and to counsel, Mr. Climaco admitted under oath that he had killed Attorney Surigao. He was charged and tried for murder before the Regional Trial Court of Cebu. On 14 February 1989, he was convicted of murder through a decision penned by Judge Juanito A. Bernad of the Regional Trial Court, 7th Judicial Region, Branch 21, Cebu City. He was sentenced to life imprisonment, to indemnify the heirs of the victim the sum of P30,000 and to pay the court costs. On the other hand, Major Rico Palcuto of the Regional Security Unit of the Philippine Constabulary assigned in Cebu, who was named by Mr. Climaco as the one who had given him the instruction to assassinate Attorney Surigao, had been placed by the military authorities under technical arrest and confined to quarters. A petition by the Commission on Human Rights for a waiver of court martial jurisdiction over the PC major had already been granted by the President. However, the City Fiscal dropped him from the complaint because Mr. Climaco recounted the allegations in his sworn statement implicating Major Palcuto in the killing. A petition for review questioning the act of the Fiscal was filed with the Department of Justice which in turn reversed the City Fiscal and ordered the prosecution of Major Palcuto. His lawyer, however, elevated the order of the Department of Justice through certiorari to the Supreme Court. To date, the Supreme Court has yet to resolve the case;

(b) Attorney David Bueno. The Commission on human Rights investigation has reached a dead end because no eye-witnesses could be found willing to swear as to the circumstances of the killing and, more importantly, to the identity of the killers. The Commission is keeping its investigation of the case open and hopes that in the near future more developments will occur;

(c) Attorney Oscar Tonog. Commission on Human Rights investigators were able to talk to Attorney Tonog's widow who claimed that many persons actually witnessed the killing but that no one was willing to come forward for fear of their own safety. Mrs. Tonog stated, however, that she could identify the man who had shot her husband should she see him again. Our investigators requested assistance from a National Bureau of Investigation (NBI) artist to

whom she provided the description of her husband's killers. The Commission on Human Rights is still in the process of identifying and tracing the perpetrators in coordination with the various governmental agencies, particularly the NBI;

(d) Attorney Vicente Mirabueno. One of the alleged killers named Mohamad Sedic, was arrested by the police of General Santos City on 7 March 1988 and on the same day a complaint for murder was filed before the Municipal Trial Court of that city for preliminary investigation. Mr. Sedic was detained at the city jail. His case was finally endorsed by the Municipal Trial Court to the City Fiscal who filed the corresponding murder charge against him in the Regional Trial Court of General Santos City. However, during the trial the prosecutor's witnesses turned hostile and as a result the prosecution's case collapsed. Thus, on 6 September 1990, the court dismissed the case against Mr. Sedic and ordered him freed from custody. Meanwhile, the other suspect, a companion of Mr. Sedic, is still at large and is being sought by the police. Further investigation revealed that the killing of Mr. Mirabueno did not result from his human rights activities but rather stemmed from his refusal as a lawyer in a civil case to settle the case amicably;

(e) Attorney Ramos Cura. The widow of Attorney Cura refused to make a statement about the case, expressing fears that cooperating with the investigators could only expose her and her family to danger from her husband's killers. In fact, even her husband's father and nephew, who were supposed to be interviewed by Commission on Human Rights investigators, had left their residence and their whereabouts are unknown. Apparently, they also feared for their lives when it was learned that Dr. Patricio Santiago, the doctor of Attorney Cura who treated him after he was shot, was himself killed. The Commission on Human Rights still considers the investigation of this case open and hopes that witnesses will come forward;

(f) Attorney Nerio Zamora. Two cases have already been filed by Attorney Zamora against Colonel Dadula before the Office of the City Prosecutor of Tagbilaran City, one for grave threats and the other for violation of R.A. No. 857 as amended. The Commission, through its regional office, is presently monitoring the progress of the trial and will report on any new developments in this case;

(g) Attorney Solema Jubilán. Shortly after the press conference in Kidapawan, Cotabato province, called by Attorney Jubilán, a policeman was assigned to protect her. The Commission considers this case to be closed;

(h) Judge Gervasio Cadavos. The Commission on Human Rights regional office in Region VIII reported that they had received information that suspects in the killing had been identified. They were Captain Asdali Aba and Lieutenant Rogelio Tibayan of the 350th PC Company; Mario Lumaon, Detachment Commander of Bangaray Tambis; Alberto Beloy, a member of the defunct Integrated Civilian Home Defence Force; and four more Philippine Army soldiers who remain unidentified. The Commission is still monitoring the investigation being conducted by the NBI, particularly whether or not enough evidence has been gathered to enable charges to be filed.

3. The case reports on the aforementioned cases, which are self-explanatory, are attached as an annex to the present report.

4. As regards the threats against the person of Attorney Romeo Capulong, the Commission has noted that despite the death threats, Attorney Capulong, who is well known for his human rights activities has not filed a single complaint before the Commission on Human Rights.

5. The Commission on Human Rights regrets that it cannot comment on the other alleged human rights violations, particularly the cases of Emmanuel Mendoza, Eliodoro Gonzales and Gil Getes, for lack of necessary details. It is neither just nor fair to impute responsibility to the Philippine Government for these alleged violations when they have not been verified.

6. The Commission on Human Rights is pleased to report that Presidential Decree No. 1850 has been repealed by Republic Act No. 7055 which strengthens civilian supremacy over the military by returning to the civil courts jurisdiction over certain offences involving members of the Armed Forces of the Philippines, other persons subject to military law, and the members of the Philippine National Police, repealing for the purpose Presidential Decree Nos. 1822-A, 1850 and 1852 and all Acts, General Orders, Executive Orders and Presidential Issuances. A copy of R.A. No. 7055 is attached.

7. The Commission on Human Rights would like to take exception to the allegation that R.A. No. 1700 aggravates the risk of assimilation of lawyers with the case of their clients or even criminalizes them. R.A. No. 1700 does not penalize lawyers handling human rights cases. In fact, Philippine law mandates lawyers to defend their clients regardless of their political belief, to the end that no person shall be deprived of life or liberty without due process of law. What the law does punish is the overt act of wilfully, knowingly and voluntarily affiliating or becoming a member of a subversive organization for the purpose of overthrowing the Government by force, violence, deceit or other illegal means. The law does not criminalize lawyers who defend the political convictions of their clients.

8. Finally, the Commission would like to emphasize that it has always acted promptly on human rights cases involving human rights lawyers and has always been committed to the protection of the rights guaranteed them by the Philippine Constitution. Further, the Commission would like to stress that it will not tolerate human rights abuses, especially against human rights lawyers who are supposed to be the champions of human rights and who deserve protection from the Philippine Government.

Annex

I. CASE REPORT CONCERNING ATTORNEY ALFONSO A. SURIGAO
(Commission on Human Rights Case No. 88-508)

1. Attorney Alfonso A. Surigao, a prominent civil rights lawyer based in Cebu, was assassinated in his residence at Tabucanal, Pardo, Cebu City at 7.00 p.m. on 24 June 1988. To avoid any suspicion of a whitewash or a cover-up, military and police investigators were ordered off the case, and instead the National Bureau of Investigation (NBI) took the lead role in the investigation. The Commission on Human Rights (CHR) also directed its Regional Officer in Cebu City to investigate the case.

2. The investigation resulted in the apprehension of one Allan Climaco. Upon his apprehension, Allan Climaco was formally interrogated on 11 July 1988 at the Visayas Command (VISCOM) Headquarters in Camp Lapu-lapu, Lahug, Cebu City in the presence of, among others, a team of NBI investigators led by Regional Director Fernando F. de los Reyes, assisted by a team of investigators of the Commission on Human Rights led by Regional Officer Attorney Rudolfo J. Teng; Colonel Apolinario B. Castano, Deputy Commander of VISCOM and several members of his staff; as well as Attorneys Noel Maninang and Julieta Bantog of the Citizens Legal Assistance Office who appeared as his lawyers. Allan Climaco, after having been apprised of his constitutional rights, including the right to remain silent and to be assisted by counsel (in this case Attorneys Maninang and Bantog), he willingly and freely admitted under oath that he was the one who killed Attorney Surigao at his residence on Friday, 24 June 1988 at about 7.00 in the evening, using a .38 caliber "Paltik" revolver. He shot Attorney Surigao first in the head and fired three more shots when the latter fell. Climaco had two companions, a certain Efren alias "Kirat" and a certain Saturnino, the former armed with a shotgun and the latter with an M-16 home-made "Paltik" revolver. These two men were posted as lookouts at the gate of the residence, while Climaco alone did the actual shooting of Attorney Surigao. Climaco implicated a certain Major Rico Palcuto of the Regional Security Unit of the Philippine Constabulary assigned in Cebu who reportedly gave him instructions to assassinate Attorney Surigao. Climaco stated that at about 10.00 p.m. after the shooting, he met with Major Palcuto at a discothèque in Cebu City where Major Palcuto reportedly gave him P500 in payment for mission accomplished. Major Palcuto has been placed by military authorities under technical arrest and confined to quarters. The whereabouts of Efren alias "Kirat" and Saturnino are not presently known.

3. Allan Climaco was charged with murder before the Regional Trial Court of Cebu City. Upon formal arraignment on 29 August 1988, he entered a plea of "not guilty". Trial then proceeded and one of the witnesses for the prosecution, the widow of Attorney Surigao, positively identified Climaco as the one who shot and killed her husband. On 14 February 1989, said Allan Climaco, was convicted for the crime of murder through a decision penned by Judge Juanito A. Bernad of the Regional Trial Court, 7th Judicial Region, Branch 21, Cebu City and sentenced to life imprisonment and to indemnify the heirs of the late Attorney Alfonso Surigao the sum of P30,000.00 and to pay the costs.

4. As regards Major Rico Palcuto, President Corazon C. Aquino responded favourably to petitions for the waiver of court martial jurisdiction over him. However, the city fiscal of Cebu, which then conducted a preliminary investigation of the case against Major Palcuto immediately upon issuance of the Presidential waiver, dropped Major Palcuto from the complaint because Climaco recounted the allegations in his sworn affidavit implicating Major Palcuto in the killing. A petition for review questioning the act of the fiscal was filed with the Department of Justice which in return reversed the resolution of the City Prosecutor and ordered the prosecution of Major Palcuto. His lawyer, however, elevated the order of the Department of Justice through certiorari to the Supreme Court. To date, the Supreme Court has yet to resolve the case.

II. CASE REPORT CONCERNING ATTORNEY DAVID BUENO (Commission on Human Rights Case No. 87-53)

1. Attorney David Bueno was killed at his office in Laoag City in the evening of 23 October 1987 by two unidentified armed men in fatigue uniforms.

2. The Commission on Human Rights has initiated an investigation into the killing. However, the investigation has reached a dead end because no eye-witnesses could be found who would be willing to execute a sworn affidavit providing details as to the circumstances of this killing and, more importantly, the identity of his killers. All that have been heard are rumours that Bueno was killed by unidentified persons wearing military uniforms, leading some people to believe that military personnel were involved in his killing. This is at best mere speculation in the absence of corroborating proof, since military-type uniforms are freely sold anywhere in the Philippines. The Protestant Lawyers League also sent a team to investigate the Bueno killing, but they have refused to furnish the Commission with a copy of their findings despite repeated requests. In the meantime, the Commission is keeping the investigation of the Bueno killing open and hopes that in the near future, more developments will occur in the case.

III. CASE REPORT CONCERNING ATTORNEY OSCAR TONOG (Commission on Human Rights Case No. 89-1180)

1. A special team of Commission on Human Rights investigators was sent to Northern Samar by the Commission immediately upon receipt of the news of Attorney Tonog's killing. The team's investigation showed that at about 6.30 p.m. on 21 March 1989, Attorney Tonog and his wife Merlita were riding a motorcycle travelling along Magsaysay Street in Catarman, Samar, when their path was blocked by another motorcycle with two men aboard. One of the men immediately alighted and fired three successive shots at Attorney Tonog, one bullet hitting him in the head and two others hitting him in the chest and his back. He was immediately rushed to the Northern Samar General Hospital but died in that hospital on 22 March 1989 at about 9.30 p.m. while awaiting an airlift to a Manila hospital where he would have been operated on.

2. The Commission on Human Rights team of investigators was able to talk to Attorney Tonog's widow who said that many persons actually witnessed the killing, but none was willing to come forward for fear of their own safety. Mrs. Tonog stated, however, that she could identify the man who shot her husband should she see him again. Thus our team requested and was able to obtain the assistance of an artist from the National Bureau of Investigation who drew a sketch of the killer based on the description provided by Mrs. Tonog.

3. Investigation of this case by the Commission on Human Rights is continuing. At this time, however, it is premature and unwise to reveal the Commission's plans to identify and bring the culprits to justice.

4. There are, however, intelligence reports from informed sources that Attorney Tonog was killed allegedly by members of a "Sparrow Unit" of the Communist Party of the Philippines/New Peoples Army reportedly for his refusal to head the CPP's Commission for the Urban Poor but was instead inclined to accept an offer to be appointed as Municipal Trial Judge of Allen, Northern Samar. This report, however, is unverified and cannot yet be accepted as fact unless corroborated by information from independent sources.

IV. CASE REPORT CONCERNING VICENTE MIRABUENO (Commission on Human Rights Case No. 88-563)

1. Attorney Vicente Mirabueno, a prominent human rights lawyer based in General Santos City in South Cotabato, was assassinated at about 10.00 a.m. on 6 February 1988 by two gunmen as he alighted from his vehicle at the public market in General Santos City.

2. Since the killing was done in a public place, there were many who saw the incident and identified the two killers. Thus, after covert investigation, the police authorities of General Santos were able to arrest one of the alleged gunmen on 7 March 1988. On the same day, the suspect, Mohamad Sedic, was formally charged in court under Criminal Case No. 16134-III of the Municipal Trial Court of General Santos City. He was detained at the city jail since he was charged with murder - a non-bailable capital offence. His companion is still at large and is still being hunted by police authorities.

3. The Commission on Human Rights (CHR), through its regional office in Cotabato City, dispatched a team of investigators to look into this case, with specific instructions to look into whether Mirabueno's assassination had any connection with his human rights activities. After conducting discreet inquiries from many sources, the Commission on Human Rights team came to the conclusion that Mirabueno's killing did not result from his human rights activities. Instead, the alleged motivation for his murder seems to have stemmed from his refusal as a lawyer in a civil case to amicably settle the case which, if left to take its normal course, could have meant a big business loss to the opposing party in the event of an adverse judicial decision.

4. The case against Mohamad Sedic was finally endorsed by the MTC of General Santos City in March 1988 to the City Fiscal who filed the corresponding murder charge against Sedic in the Regional Trial Court. At the trial of the case, however, the prosecutor's witnesses turned hostile, as a result of which the prosecution's case against Sedic collapsed. Thus, the Regional Trial Court on 6 September 1990 dismissed the case against Sedic and ordered him freed from custody.

5. In the absence of any other developments in the case, the same is now considered archived.

V. CASE REPORT CONCERNING ATTORNEY LAXAMANA RAMOS CURA (Commission on Human Rights Case No. 88-044)

1. Attorney Laxamana Ramos Cura was assassinated at his residence in Pampanga in the morning of 13 June 1988 by two unidentified armed men who shot him twice in the head and once in the body. The incident was reportedly witnessed by his father, nephew and neighbours who were jogging in the area that morning.

2. On its own, the Commission on Human Rights (CHR), through its regional office in San Fernando, Pampanga, sent a team to investigate the killing. The team was able to talk to his widow, but she refused to say anything about the case, expressing fears that giving statements to investigators about her husband's killing could only expose her and her family to danger from her husband's killers. The team sought out the victim's father and nephew to shed light on the case, but unfortunately both had left their residence and their present whereabouts are not known. Apparently, they also fear for their lives especially when it was learned later that Dr. Patricio Santiago was himself killed. Dr. Santiago was the doctor to whom Cura was brought after being shot, and the speculation is that the killers of Cura thought that some information might have been passed on to Dr. Santiago before Cura died, not knowing that Cura was dead on arrival when brought to the clinic of Dr. Santiago.

3. The Commission on Human Rights considers the investigation of this case open and hopes that in the future, eye-witnesses will come forward and give testimony on this case.

VI. CASE REPORT CONCERNING ATTORNEY NERIO ZAMORA (Commission on Human Rights Case No. 91-007)

1. Attorney Nerio Zamora, a human rights lawyer and the Provincial Coordinator of the Free Legal Assistance Group of the province of Bohol, was allegedly denied his right to visit and confer with his clients who were detained at the Bohol PC Stockade by the guards thereat upon the instructions of the Provincial Commander, Colonel Antonio G. Dadula.

2. A personal interview with Attorney Zamora himself was conducted by our regional investigators based in Cebu City. Attorney Zamora narrated that at 2.00 in the afternoon of 1 January 1991 he was awakened by Mrs. Maxima Ingking and companions seeking his immediate assistance to have her son,

Allan Ingking, examined and treated by a physician for the injuries he allegedly sustained in a mauling incident that occurred while he was detained at Camp Dagohoy PC Stockade in Tagbilaran City. Despite Attorney Zamora's identifying himself as Allan's legal counsel and also that of Cristito Cagabcab, another alleged mauling victim, his request to see and confer with his clients was denied by the guards who said they were merely obeying the order of their superior, Colonel Dadula. At that time, the colonel was sleeping and no guard would dare wake him up to relay Attorney Zamora's request to visit his clients. Finding no other alternative, Attorney Zamora filed an urgent omnibus manifestation and motion for transfer of detention prisoner before the Regional Trial Court of Bohol. Judge Andres S. Santos in his order dated 2 January 1991 ordered the examination of Allan and Cristito by a competent physician and a report thereon to be submitted to the court as soon as possible. The court further ordered the guard to allow visitation of the two accused by their lawyer which right is clearly guaranteed by the Constitution, the denial of which is punishable under R.A. 857. The motion for transfer was, however, held in abeyance pending the comment of the prosecuting fiscal.

3. Armed with the court order, Attorney Zamora went back to the barracks to assert his visitation rights but was again refused by the guards who feared their superior more than the court order. For the second time, Attorney Zamora tried to see the colonel himself. This time, Colonel Dadula was already waiting for him such that before Attorney Zamora could state his purpose, the colonel threw the court order in front of Attorney Zamora. The colonel even cursed Attorney Zamora for resorting to the court for his visitation rights. Colonel Dadula was so furious he uttered words which Attorney Zamora perceived to be a threat to his life. Perhaps, realizing that Attorney Zamora was not a bit perturbed by his wrath, the colonel cooled off and immediately ordered Master Sergeant Trangia to let Attorney Zamora see and confer with his clients inside the stockade. The colonel this time turned his anger on to his subordinates, lambasting them for denying Attorney Zamora his visitation rights. Finally, Attorney Zamora was able to see both of his clients who narrated to him their ordeal in the hands of Master Sergeant Trangia, showing him hematomas all over their bodies. The request for a physical examination of the two by a doctor, however, was ignored by Colonel Dadula.

4. Colonel Dadula, on the other hand, denied all these accusations, saying that if only Attorney Zamora had approached him personally on this matter he would have gladly allowed the visit. He called the act of Attorney Zamora in securing a court order as childish and totally unnecessary. The colonel further contended that he even tried to have the two accused examined by a physician but the two refused as they wanted the presence of their lawyer during the physical examination. In fact, according to the colonel, he was not in truth mad at Attorney Zamora but was merely employing the method of "psychological warfare" normally used by military personnel to gain leverage or advantage over the opponent.

5. As of this writing, two cases have already been filed by Attorney Zamora against Colonel Dadula before the Office of the City Prosecutor of Tagbilaran City: one for grave threats and the other for violation of Republic Act No. 857, as amended. The Commission, through its regional office, will monitor the progress of the trial and will issue an updated report as soon as new developments arise.

VII. CASE REPORT CONCERNING SOLEMA JUBILAN (Commission on Human Rights Case No. XII-90-326)

1. Reports were received that Attorney Solema Jubilán, a human rights lawyer, Chairperson of the Protestant Lawyers League of the Philippines, Deputy Coordinator for Region XII of the Free Legal Assistance Group and Executive Director of PAGSAKOP Foundation for Orphan Children of the War, had been receiving death threats.

2. Investigators dispatched by Commission on Human Rights regional office in Cotabato City were able to gather that as early as July 1989 Attorney Jubilán had been receiving death threats but she just ignored them. The threats came by way of telephone calls, posters and notes left on the doorway of her law office. Recent death threats against her life occurred while Attorney Jubilán was in Europe attending the General Assembly of Amnesty International. In an interview, Attorney Jubilán's secretary disclosed that on 30 April and 22 May 1990, telephone calls from the same caller were again received threatening to kill Attorney Jubilán and her family. On 23 May 1990, the Jubilán's dogs were poisoned and thereafter, suspicious-looking men were seen lurking in the vicinity of her law office. However, she did not report these incidents to the authorities thinking that her observations were merely speculations and that no one would believe her.

3. On 27 June 1990, Attorney Jubilán, in a press conference in Kidapawan, Cotabato Province, declared that the Philippine Government was firmly committed to the protection of the civil liberties of its citizens and that the Commission on Human Rights considered death threats on human rights advocates a serious infraction of civil rights. Shortly after the conference, the PC/INP assigned a policeman as security officer to ensure the safety of Attorney Jubilán.

4. The Commission now considers this case closed with a commitment that the situation of Attorney Jubilán and other human rights advocates be closely monitored.